PUBLIC PROSECUTOR v. LIM YAM

[A. C. J. (Ismail Khan J.) July 15, 1960]

[Malacca — Criminal Appeal No. 12 of 1960]

Criminal Law and Procedure — Bribery — Arrest without warrant of non-seizable offence — Whether favour sought was "in relation to the affairs of his principal."

The respondent was convicted and fined $100 in default 3 months' imprisonment on a charge of corruptly offering $10 to a police officer "as an inducement for forbearing to do an act in relation to his principal's affairs, to wit. to refrain from proceeding with the investigation into an alleged offence of buying rubber without licence" thereby committing an offence punishable under section 3(b) of the Prevention of Corruption Ordinance, 1950.

The Public Prosecutor appealed against the sentence on the ground of its inadequacy.

The circumstances in which the respondent was arrested were: The respondent while carrying scrap rubber was stopped by a detective sergeant. Failing to get a satisfactory explanation from the respondent as to the scrap rubber, and on his refusal to produce his identity card, the sergeant arrested him. Subsequently the respondent offered the sergeant a sum of $10 to release him. The bribe offered was alleged to be in respect of the "offence of rubber".

Held: (1) the "offence of rubber" could only be the offence of buying rubber without a licence, an offence punishable under section 30 of the Rubber Supervision Enactment, which is non-seizable;

(2) in this case the sergeant had no warrant: the arrest of the respondent was therefore illegal;

(3) the favour sought by the respondent could not be said to be in relation to the affairs of the sergeant's principal.

Cases referred to:—

(1) *Hiralal Badlo* v. *Rex* [1950] M.L.J. 96.

(2) *Abdul Hamid* v. *Public Prosecutor*, [1956] M.L.J. 231.

COURT OF APPEAL.

Wan Suleiman bin Pawan Teh (Deputy Public Prosecutor) for the appellant.

F. K. Sellar for the respondent.

Ismail Khan J.: In this appeal the respondent was charged as follows:—

"That you on 9.11.59 at about 2.40 p.m. at Pengkalan Village in the district of Alor Gajah, State of Malacca, corruptly offered cash amounting to $10 to Det. Sgt. 275 Daud bin Yusof, a Police Officer in the Public Service of the Federation of Malaya, as an inducement for forbearing to do an act in relation to his principal's affairs, to wit, to refrain from proceeding with the investigation into an alleged offence of buying rubber without licence and that you thereby committed an offence punishable under section 3(b) of the Prevention of Corruption Ordinance 1950".

He was convicted and fined $100 in default three months' imprisonment

The Public Prosecutor has appealed against the sentence on the ground of its inadequacy.

After the learned Deputy Public Prosecutor had concluded his submissions, Mr. Sellar for the respondent invited me to exercise my powers of revision under section 322 of the Criminal Procedure Code and to exercise my discretion under section 323 and permit him to be heard.

As the record of the proceedings was now before me, I decided to act under section 322 and also gave Mr. Sellar leave to make his submissions.

He contended that the conviction was wrong in law as the arrest of the appellant was illegal, and therefore the favour sought by him in this case could not be said to be in relation to the affairs of his principal. He referred to the case of *Hiralal Badlo* v. *Rex*[1]. In that case the appellant was convicted of corruptly giving the sum of $15 to a corporal in the Regimental Police as an inducement to show favour to the appellant and his friends in relation to his principal's affairs by releasing them from his custody, an offence under section 3(b) of the Prevention of Corruption Ordinance. The appellant and his friends had been arrested by the corporal who suspected that they were in possession of stolen property, but in fact they were not in possession of such property. It was held that as the arrest of the appellant and his friends was illegal, the favour sought was not in relation to the affairs of the principal of the corporal and that the conviction was wrong.

In this case, the circumstances in which the respondent was arrested were described by P.W.1, a detective sergeant. He said he stopped the respondent at Pengkalan Village. The respondent was then carrying scrap rubber inside a bucket on the carrier of his cycle. Failing to get a satisfactory explanation from the respondent as to the rubber scrap, and on his refusal to produce his identity card, he arrested the respondent. On the way the respondent offered him a sum of $10 in $1 notes to release him. P.W.1 alleged that the bribe offered was in respect of the "offence of rubber". Mr. Sellar argued that the "offence of rubber" mentioned by P.W.1 could only be the offence of buying rubber without a licence, an offence punishable under section 30 of Enactment No. 10 of 1937 (Rubber Supervision). Such an offence is non-seizable. In support of his contention he referred to the charge itself which stated that the sum of $10 was offered to P.W.1 "as an inducement for forbearing to do an act in relation to his principal's affairs, to wit, to refrain from proceeding with the investigation into an alleged offence of buying rubber without a licence". He also relied on the statement made by the respondent to the police, P4, in answer to questions put to him from which it would appear that the offence in respect whereof the bribe was alleged to have been offered was the offence of buying rubber without a licence. I also observe that the learned President has in his grounds of judgment found that the respondent was arrested by P.W.1 for a non-seizable offence. I am inclined to agree with the contention.

In this case, it is clear that P.W.1 had no warrant. The arrest of the respondent was therefore illegal and I must hold, following the decision of Murray-Aynsley C.J. in the above case, with which I respectfully agree, that the favour sought by the respondent cannot be said to be in relation to the affairs of P.W.1's principal.

The learned Deputy contended that P.W.1 had wide powers of arrest under the Emergency (Rubber Control) Regulations, 1949, and that the arrest of the respondent was lawful. He cited the case of *Abdul Hamid* v. *Public Prosecutor*[2]. In my opinion, that case has no application as no question of an illegal arrest was involved as it is in this case. It is true that under section 9 of the Emergency (Rubber Control) Regulations, any police officer could make an arrest for any offence under the Regulations. There is nothing, however, to indicate that the respondent was arrested for an offence under those Regulations. He was not charged with offering a bribe in respect of any such offence. On the other hand, the charge in this case shows unmistakably that the bribe was offered in respect of an offence of buying rubber without licence. I therefore quashed the conviction and ordered that the fine of $100 and the sum of $10 paid by the respondent be refunded to him.

Conviction quashed.

Solicitors: *Sault, Keith Sellar & Co.*

CHOO HONG FAI v. TAN SIAK KERN

[A. C. J. (Adams J.) August 25, 1960]

[J. B. — Civil Appeal No. 2 of 1960]

Practice and Procedure — Pleading — Leave to amend.

As a general rule leave to amend ought not to be refused unless the Court is satisfied that the party applying is acting *mala fide*, or that his blunder has done some injury to the other side which cannot be compensated by payment of costs or otherwise.

Hongkong & Shanghai Banking Corporation v. *Tang Hong* [1] distinguished.

Cases referred to:—

(1) *Hongkong & Shanghai Banking Corporation* v. *Tang Hong* [1959] M.L.J. 51.

(2) *Tildesley* v. *Harper* (1878) 10 Ch. D. 393 at p. 396.

CIVIL APPEAL.

J. D. Donnelly for the appellant.

Omar bin Saleh for the respondent.

Cur. Adv. Vult.

Adams J.: This is an appeal against the refusal of the learned President of the Sessions Court, Johore Bahru, to allow Counsel for the plaintiff to amend the plaint under the provisions of O. 14 of the Subordinate Court Rules.

It is a little difficult from the proceedings to discover precisely what happened in the lower Court. The action was one for ejectment. On the 10th August, 1959, Messrs. Battenberg and Talma, Solicitors for the plaintiff, of whom the defendant is a sub-tenant, caused to be served on the defendant a notice to quit and deliver up vacant possession of the premises which he occupied. In that notice to quit, there is a statement that the monthly rent of $70.25 is payable in arrear. This statement was repeated in paragraph 2 of the Statement of Claim. The defendant duly filed his Defence and paragraph 2 of the Statement of Defence specifically maintains that the notice to quit is bad in law, but does not say why. But paragraph 3 of the Statement of Defence denies that at the time the notice to quit was served upon the defendant the rent was in arrears for 14 days. On the 26th November, 1959, the case was mentioned before the learned President, and Mr. Donnelly for the plaintiff asked that, if there were a point of law to be argued in respect of the notice to quit, that it be heard on that day. The case was not listed for hearing on that day and Che Omar Saleh for the defendant objected.

The case came on for trial on the 3rd February and Mr. Donnelly outlined the plaintiff's case. At the end of the opening Che Omar Saleh pointed out that it was admitted that the premises fell under the provisions of the Control of Rent Ordinance and a condition precedent to proceedings of this nature by virtue of the provisions of section 12 of that Ordinance is that before ejection proceedings can be taken the rent due must be in arrears for more than 14 days and that, since both the notice to quit and the Statement of Claim recited that the rent was payable in arrears, it clearly must be so payable. In the event, therefore, as the notice was served on the 10th August in respect of the rent for July, at the time the notice to quit was served the rent was not in arrears for 14 days but for 10 days, and therefore no order or judgment for the recovery of the premises could be made.

Mr. Donnelly then asked the Court for leave to amend the pleadings by apparently deleting the words "payable in arrear" from paragraph 2 of the Statement of Claim. Che Omar Salleh replied that he had no objection, but pointed out that the amendment in fact went to the root of the defence. The defendant's case was that the rent was in fact payable in arrears as set out both in the notice to quit and in the Statement of Claim.

The learned President refused leave to amend and dismissed the suit. In support of his action he followed the judgment of Sutherland J. in the *Hongkong & Shanghai Banking Corporation* v. *Tang Hong*[1] on the ground that the defendant would be placed in a worse position than he would have been if the amended pleadings had been delivered in the first instance.

I think the learned President was misled. The general principles are laid down in *Tildesley* v. *Harper*[2] where Bramwell L.J. said:—

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting *mala fide*, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise."

Had paragraph 2 of the pleadings averred that the rent was payable in advance in the first instance, the defendant would have been in exactly the same position as he would be if the amendment were now made. In the *Hongkong & Shanghai Bank case* the facts are different and it must be noted that the issues after the amendment would not have been the same. In the